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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. 1158

LOUISVILLE CHAIR COMPANY, INC., - Petitioner,

versus

NATIONAL LABOR RELATIONS BOARD and UNITED FURNITURE WORKERS OF AMERICA, LOCAL # 236, AFL-CIO, - - Respondents.

SUPPLEMENTAL BRIEF IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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Pursuant to Paragraph 5 of Rule 24 of the Rules of the Supreme Court of the United States, Louisville Chair Company, Inc., the Petitioner herein (hereafter called "the Company"), hereby files with the Court this Supplemental Brief in support of the Company's Petition for a Writ of Certiorari. The purpose of this Supplemental Brief is to call the Court's attention to three new cases which were not available to the Company at the time it filed the Petition.

1. *The Company's Right to a Hearing.* The first of these cases is pertinent to the case at bar with re-

spect to the Company's contention that it was entitled to a hearing on its objection to the election based on the irregularity in the conduct of the election, as evidenced by the fact there were more ballots than there were actual voters. In *Austill Waxed Paper Company*, 169 NLRB No. 169 (decided February 29, 1968), the Board overruled its Twelfth Regional Director, sustained an employer's objections to an election, set the election aside and ordered a new election for the following reasons:

> "Under the particular facts of this case, we do not agree with the Regional Director's conclusion that Employer's Objection 2, which raises the issue of the ballot box being left unsealed and unattended for from 2 to 5 minutes, should be overruled. This objection, which goes to the very heart of the conduct of an election,—*maintaining the integrity of the ballot box*—is not, in our opinion, the proper subject for litigation on an *ad hoc* basis. *We do not believe that we should speculate on whether something did or did not occur while the ballot box was left wholly unattended. The Board through its entire history has gone to great lengths to establish and maintain the highest standards possible to avoid any taint of the balloting process; and where a situation exists, which, from its very nature, casts a doubt or cloud over the integrity of the ballot box itself, the practice has been, without hesitation, to set aside the election.*
>
> "It is our belief that the leaving of the ballot box unsealed and unattended for possibly as much as 5 minutes is *a condition that relates directly to*

> *the integrity of the ballot box. It is the Board's responsibility to certify to the validity of its own balloting procedures, and, if it cannot, as here, we believe that in the interest of maintaining our high standards, there is no alernative but to set the election aside and direct a second election.*" (Our emphasis.)

As we pointed out on page 16 of the Petition, "it is the integrity of the election process itself that is on trial where any taint of misconduct permeates the entire process", as in the instant case, and therefore "the parties are entitled to the safeguards of a hearing on the issue".

Another court has recently upheld an employer's right to a hearing on certain challenged ballots because of the Board's *ex parte* administrative determination of the issue. The grounds for this ruling are stated in *Macy's Missouri-Kansas Division* v. *N.L.R.B.*, —— F. 2d ——, 57 CCH Lab. Cas. ¶ 12,495 (8th Cir., decided February 16, 1968), as follows:

> "In a situation of this type *we think Macy's should have an opportunity to present its case to the Board and be afforded a full hearing, instead of receiving a summary rejection of its claim based upon the Regional Director's administrative finding.* In a somewhat similar situation where the Board refused the objecting party a hearing on its objection in connection with a representation election the Fifth Circuit in *NLRB* v. *Lamar Electric Membership Corporation,* 362 F. 2d 505 (5th Cir., 1966), set aside the Board's order and remanded the case to the Board for a hearing, commenting on the Board's action thusly, at 508:

'This treatment of the matter by the Regional Director would obviate the necessity of ever having a hearing on objections to an election. The disputed facts were resolved without testimony under oath, without cross-examination, and without the procedural safeguards of a hearing.'" (Our emphasis.)

Certainly the same can be said with respect to the case at bar, both with regard to the irregularity in the conduct of the election and the Union's misrepresentations to the employees. For example, the presence of two more ballots in the ballot box than there were actual voters raises the possibility of forged ballots and chain balloting, something which the Board has never permitted the Company to investigate and has, from the record, never investigated itself. If the Board truly seeks to "maintain the highest standards possible to avoid any taint of the balloting process" and to maintain "the integrity of the ballot box" (as it said in the *Austill* case, *supra,* it does), it should have, at the very least, granted the Company a hearing on its objection to the election on the ground that the election process was tainted and the integrity of the ballot box was not preserved.

The Company has at all stages of the proceedings before the Board and the court below, subsequent to the election, not only clearly stated the bases for its objections to the election and requested a hearing on those objections, but has offered evidence that *in actual fact* there were more ballots than voters, that certain employees were not present for the election and that the

Board has carefully and meticulously cast a veil of silence over its *ex parte* investigation of the objections to the election and has effectively prevented the Company from pursuing its own investigation through suppression of evidence and denial of the Company's right to examine and cross-examine witnesses.

Such a situation on its face clearly demonstrates that there was some impropriety in the conduct of the election which tainted the integrity of the ballot box. This proffer of evidence by the Company contrasts sharply with the groundless speculations on page 8 of the Brief for the National Labor Relations Board in Opposition herein that "[a] person improperly or accidentally left off the eligibility list *may* have voted, or a person on the list *may* have voted without having his name checked off". (Our emphasis.) There is not one word of evidence in these proceedings to support either one of those surmises.

We submit that the Board's position in the case at bar is directly contrary to its policies stated in the *Austill* case, *supra,* and the other cases cited in the Company's original Petition in this Court. We further submit that the decision of the Eighth Circuit in the *Macy's* case, *supra,* and the other decisions cited in the Petition are directly contrary to the decision of the Sixth Circuit in the case at bar, and that the cited cases amply support and call for the granting of the Company's request for a hearing on its objections.

2. *The Nature of the Strike.* Subsequent to the printing of the Petition for a Writ of Certiorari herein, the Board's decision in *Rogers Brothers Company*

of California, 169 NLRB No. 124 (decided February 15, 1968), came to our attention. It is another case where a union as a "second thought" seized on an employer's unfair labor practice as the ostensible cause of a strike, while the real cause of the strike was economic in character, that is, to put pressure on the employer in its negotiations with the union.

We submit that under the circumstances in the case at bar, it is clear the strike by the Furniture Workers Union was in its inception *only* a sympathy strike in support of the Teamsters Union, and the Company's refusal to bargain with the Furniture Workers Union was not a precipitating cause of the strike and in fact had nothing to do with the strike. Consequently, the Furniture Workers' strike was an economic strike, as the Board and the court below should have held in accordance with *Rogers Brothers, supra,* and the other decisions cited on this point in the Company's Petition to this Court.

CONCLUSION.

We again respectfully submit to this honorable Court that it is clear from the foregoing and the facts and authorities cited in the Petition that the decision of the court below with respect to the Company's right to a hearing and the nature of the strike was prejudicially erroneous. We further submit that this decision by the Sixth Circuit is in conflict with decisions of other courts of appeal, this Court has not settled the important questions of federal law presented in this

case, and the decision of the court below has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

We therefore earnestly renew the Company's request that its Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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